Equality and Human Rights Commission

Contents

Minutes of the 108th meeting of the Board of the EHRC 2

Attending 2

Commissioners 2

Officers 2

Guests 2

1. Chairwoman's welcome and apologies 3

2. Declarations of interest 3

4. Actions arising (EHRC 108.03) 3

5. Committee and Commissioner Working Group updates (EHRC 108.04) 4

6. CEO Report and Chairwoman's update (EHRC 108.05) 5

7. Amending the Equality Act (2010) – the meaning of 'sex' (EHRC 108.06) 6

8. Review of the Code of Practice on Services, Public Functions and Associations (EHRC 108.07) 7

9. Board effectiveness review and governance update (EHRC 108.08) 7

10. AOB (EHRC 108.09a, 108.09b, 108.09c, 108.09d, 108.09e) 8

Minutes of the 108th meeting of the Board of the EHRC

23 November 2022 (13:30-17:00)
Virtual

Attending

Commissioners

Baroness Kishwer Falkner (Chairwoman), Eryl Besse, Jess Butcher, David Goodhart, Alasdair Henderson, Helen Mahy, Akua Reindorf, Dr Lesley Sawers, Su-Mei Thompson and Caroline Waters.

Officers

Marcial Boo, Chief Executive Officer
Cath Denholm, Chief Operating Officer (items 9 and 10)
Melanie Field, Chief Strategy and Policy Officer
Jacqueline Killeen, Chief Regulator
Sophie Bold, Director, Legal Policy and Advice (items 8 and 9)
Ruth Latusek, Senior Associate, Governance Lead
Alasdair MacDonald, Director, Policy and Human Rights Monitoring (items 7 to 11)
Bill Malloy, Director, Planning, Performance and Governance (items 6 and 10)
Britta Rinaldi, Chief of Staff
Kate Spencer, Director, Legal Policy and Advice (items 8 and 9)
Sarah Whelan, Principal, Corporate Governance

Guests

Charles Ramsden, Government Equality Hub

1. Chairwoman's welcome and apologies

1.1 The Chairwoman welcomed attendees. There were no apologies.

1.2 The Chairwoman advised that this was the last Board meeting of Caroline Waters who is the EHRC's Deputy Chair and longest serving Commissioner, and Charles Ramsden, representing the Government Equality Hub, who was retiring. She thanked Caroline and Charles on behalf of the Board.

1.3 The Board agreed to hold the next meeting on 18 January 2023 in-person and to have a farewell dinner for Caroline Waters. The Chairwoman confirmed that, due to the late change in format, Commissioners may exceptionally attend the meeting virtually and invited them to notify the team in advance.

Action: Governance team to organise the January 2023 Board meeting in person, with dinner in London for those available.

2. Declarations of interest

2.1 The following new interests were declared:

a) the Chairwoman has a family member who is likely to be employed as a Special Advisor to the Prime Minister but has not yet completed contractual formalities; and
b) Su-Mei Thompson will be joining the supervisory board of the International Institute of Management Development.

2.2 The following existing interests were noted, and the Chairwoman determined that the conflicts were not reasons for the Commissioners to recuse themselves from the discussion on the Equality Act 2010 at the meeting:

a) David Goodhart is an employee of the think tank Policy Exchange which has published on equality issues; and
b) Akua Reindorf has been instructed by the charity LGB Alliance to represent them in an unrelated legal case.

3. Minutes of the 107th Board meeting and away day (EHRC 108.01, 108.02)

3.1 The Board approved the minutes of the meeting of 18 October and the note of the away day of 19 October as accurate records.

4. Actions arising (EHRC 108.03)

4.1 The Board noted the action log. Commissioners were advised that they will be kept informed of discussions on the fees and expenses guidance for Commissioners and Committee members (action 107a/4.3); that the communications matrix of reactive content and recurring issues will be brought to the January 2023 Board meeting or thereafter (action 105/9.2.1); and that an update on three nations working will be provided at the June 2023 Board meeting (action 99/8.5.b).

Action: Communications team to provide an update on the matrix of reactive content and recurring issues at the January 2023 Board meeting, and present the matrix as part of the communications and stakeholder engagement strategy at the March 2023 Board meeting.

Action: Chief Strategy and Policy Officer to provide an update on three nations working for the June 2023 Board meeting.

4.2 The Wales Commissioner requested, in respect of actions 107a/8.2 and 107a/8.3, that the Scotland and Wales Committees have the opportunity to discuss the Online Safety Bill, as noted in the previous minutes.

Action: Chief Strategy and Policy Officer to arrange discussions on the Online Safety Bill at future Scotland and Wales Committee meetings.

4.3 Commissioners queried why the CEO report does not include an update on financial performance (action 106/7.3). The CEO advised that the report included an update on the budget and that a fuller financial update will be provided in each CEO report from January 2023.

Action: Governance team to amend the action log for the Online Safety Bill (107a/8.2 and 107a/8.3) and Financial Performance (106/7.3).

5. Committee and Commissioner Working Group updates (EHRC 108.04)

5.1 The Board noted the Audit and Risk Assurance Committee (ARAC) report.

5.2 The Chair of the Statutory Report Commissioner Working Group advised that the Working Group met on 22 November and discussed potential risks and the sign-off process.

5.3 The Chair of the Human Rights Monitoring Commissioner Working Group advised that the Working Group met on 7 November. The minutes of the meeting would subsequently be shared with Commissioners for information. She advised that the Working Group had reviewed the EHRC's draft shadow reports relating to the UK's obligations under the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights. The team are also supporting civil society organisations to engage with the Universal Periodic review. She also advised that the Global Alliance of National Human Rights Institutions has now published its report on the organisations it recently reviewed for reaccreditation, including the EHRC, and

proposals on how we intend to take forward their recommendations would be brought to the Board in January 2023.

Action: Governance team to share with Commissioners the minutes of the Human Rights Monitoring Working Group meeting held on 7 November.

5.4 The Wales Commissioner advised that the Wales Committee met on 7 October where they discussed the revised Scotland and Wales Committee Terms of Reference. She advised that she and the Scotland Commissioner had discussed the comments from the Scotland and Wales Committees with the Chief Operating Officer and Director of Planning, Performance and Governance, and that those comments which were felt could be included have been reflected in the Terms of Reference provided to the Board for approval, at item 9.

5.5 The Scotland Commissioner advised that the Supreme Court had ruled against the Scottish Government holding a new independence referendum. She provided an update on the Scottish Parliament's debate on the Gender Recognition Reform (Scotland) Bill.

6. CEO Report and Chairwoman's update (EHRC 108.05)

6.1 The Board approved the appointment of Jonathan Parsons as an independent member of the People and Workspace Committee (P&WC) from 30 November 2022 for a two-year term.

6.2 Commissioners noted the CEO report, including updates on the budget, EHRC's pay business case for 2022-23 and PCS union strike action. The CEO advised that the Board will be updated on strike action and the annual people survey results in the New Year.

Action: Director of People and Infrastructure to arrange updates on PCS union strike action and the annual people survey results to the P&WC and Board meetings.

6.3 The Chairwoman advised that the review of the EHRC's estates strategy should be discussed by the P&WC before a paper is provided to the Board in June 2023.

Action: Director of People and Infrastructure to provide the estates strategy to the P&WC meeting before the June 2023 Board meeting.

Action: Governance team to invite the Chairwoman and interested Commissioners to the P&WC discussion on the estates strategy.

6.4 Commissioners noted that progress is slow on the proposed section 23 agreement with the Department for Work and Pensions (DWP), and advised that the EHRC should consider all regulatory options available to it when working with Government departments.

Action: Chief Regulator to provide an update on DWP next steps in the CEO report for the January 2023 Board meeting.

6.5 Commissioners enquired whether the Director of Evidence, Strategy and Three Nations leaving the EHRC at the end of a two-year secondment will affect the resources allocated to publishing the EHRC's statutory report. The CEO provided assurance that a new post, the Senior Principal for Data and Evidence, reports directly to the Chief Strategy and Policy Officer, is already working well with the Statutory Report Commissioner Working Group and its Chair on the report, and that the EHRC is also recruiting a statistician. An update on the statutory report will be provided to the Board in March 2023.

Action: Chief Strategy and Policy Officer to provide an update on the Statutory Report at the March 2023 Board meeting.

6.6 The Chairwoman updated Commissioners on the new Commissioner appointments and noted that the names are not yet in the public domain.

6.7 The Chairwoman advised that the Secretary of State has appointed Alasdair Henderson and Eryl Besse as the two new Deputy Chairs, and the Board congratulated them. The Chairwoman advised that she will provide the Board with further information on their respective roles and responsibilities at the next Board meeting.

Action: Private Office to include Deputy Chair role and responsibilities in the Chairwoman's update for the January 2023 Board meeting.

7. Amending the Equality Act (2010) – the meaning of 'sex' (EHRC 108.06)

7.1 The Board welcomed and noted the paper, including:

a) the legal and policy issues that arise from the drafting of the Equality Act 2010 in relation to the concepts of sex, gender, and gender reassignment, including those arising from its interaction with the Gender Recognition Act 2004; and
b) whether and how the EHRC can seek to clarify the law, convene debate on the balance of rights, and support decision-making in relation to issues of sex, gender and gender reassignment.

7.2 The Board noted the suggestions that the EHRC should:

a) seek opportunities to clarify the law, including as appropriate through the publication of guidance, as achieved by our separate and single-sex service providers guidance, and through our strategic intervention in legal cases that may set precedent or help clarify specific aspects of the law; and
b) continue work to understand the potential concerns and issues with the current legislative framework so that we are ready to advise policymakers if any future changes to the Equality Act 2010 or Gender Recognition Act 2004 are tabled for parliamentary discussion, as is currently taking place in Scotland.

7.3 The Chairwoman advised Commissioners that the Crown Prosecution Service is currently consulting on guidance on deception as to biological sex in rape and serious sexual offences legal guidance, and that the EHRC is considering a response.

8. Review of the Code of Practice on Services, Public Functions and Associations (EHRC 108.07)

8.1 The Board agreed to: review and update the entire Services Code of Practice, ensuring it reflects case law and developments relevant to all the protected characteristics and provisions covered by the Code; to improve the format of the Code to ensure it is clearer and more readable and accessible. This work should be undertaken at pace with the clear intention to consult on it by summer 2023 and lay it before parliament in 2023. They agreed that the Chairwoman should engage the Secretary of State on the EHRC's intentions to update the Code and the consequent need to seek Ministerial approval and lay it before Parliament.

Action: Private Office to ensure that the Chairwoman is briefed to raise the forthcoming review of the Services Code with the Secretary of State at their next meeting, potentially followed by a formal letter.

8.2 Commissioners made the following observations and suggestions:

a) having up to date statutory Codes is important for our role as an effective regulator;
b) there has been relevant case law on issues that the Code should reflect;
c) sufficient resources should be allocated to the review to ensure the timetable is met; and
d) we should seek fresh ministerial assurance that the revised Code will be laid in Parliament.

8.3 The Board agreed that other EHRC Codes of Practice and Technical Guidance should also be reviewed as a priority, including the Code of Practice on Employment. They noted that the Department for Education is shortly intending to consult on its guidance on trans issues in schools.

9. Board effectiveness review and governance update (EHRC 108.08)

9.1 The Board approved the Board improvement plan, the Governance Manual subject to minor amendments, and the Terms of Reference for the Scotland and Wales Committees.

9.2 The Chair of ARAC suggested including the Governance Manual in next year's internal audit plan to review how it is working in practice.

Action: Director of Planning, Performance and Governance to amend the Governance Manual as agreed; and to schedule it in the internal audit planning for 2023-24.

9.2 Commissioners agreed to the proposition in paragraph 4.10 of the Governance Manual that the Board and all its Committees should operate on the principle that meetings are arranged either as in-person or virtual, but not hybrid. Virtual attendance at an in-person meeting should be the exception, at the discretion of the Chair of the Board/Committee and agreed in advance.

9.3 Commissioners welcomed the Board improvement plan and made the following observations:

a) the plan will require regular monitoring and reporting on progress from the Executive to ensure actions are progressed;
b) it is important to ensure there is a clear line of sight between the EHRC's vision and the desired outcomes when communicating the vision, purpose and objectives to staff; and
c) it should be clearer that the Code of Conduct relates to general conduct and extends to the Board's Committees.

9.4 The Chief Operating Officer advised that the Board will be updated on progress to implement the plan through each CEO report to the Board, and more formally in six months' time.

Action: Governance team to make amendments as agreed; and to provide updates on the Board improvement plan via the CEO report, and a formal report at the May 2023 Board meeting.

10. AOB (EHRC 108.09a, 108.09b, 108.09c, 108.09d, 108.09e)

10.1 The Board noted the Forward Schedule, the draft minutes of the Scotland Committee, Wales Committee and ARAC meetings, and the briefing on the Public Order Bill second reading.